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May 4, 2021

VIA ECF

**MEMO ENDORSED**

The Honorable Ona T. Wang  
United States Magistrate Judge  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *In re Application of Vale S.A., Vale Holdings B.V., and Vale International S.A. for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings*, No. 20-mc-199-JGK-OTW

Dear Judge Wang:

We write on behalf of Vale S.A., Vale Holdings B.V., and Vale International S.A. (collectively, “Vale”) to raise a very troubling development with the Court with respect to the substitution of the Israeli firm Amit, Pollak, Matlon & Co. (“APM”) for Proskauer Rose LLP (“Proskauer”) on behalf of Respondents Perfectus Real Estate Corp. and Tarpley Belnord Corp. (collectively, “Perfectus”).

Vale filed the above-captioned application to conduct discovery pursuant to 28 U.S.C. § 1782 (the “Application”) on April 24, 2020, seeking discovery from a number of real estate entities (together, the “Respondents”) for use in proceedings (the “English Proceedings”) pending in the United Kingdom before the High Court of Justice, Business and Property Courts of England and Wales, Commercial Court (QBD) (the “High Court”) against Benjamin (Beny) Steinmetz, Dag Lars Cramer, Marcus Struik, Asher Avidan, Joseph Tchelet, David Clark, the Balda Foundation (“Balda”), and Nysco Management Corp. (“Nysco”) (together, the “Defendants”). As Vale advised the Court, *inter alia*, Vale had reason to believe that Steinmetz, his foundation (Balda) and its subsidiary corporation (Nysco) had invested at least a portion of

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their ill-gotten gains from a massive fraud perpetrated against Vale in various New York real estate ventures involving Respondents. ECF No. 2 at 6. The Court granted the Application on July 20, 2020, ECF No. 45 at 9, and on January 29, 2021, denied the Respondents' "motions to quash and associated requests to limit the subpoenas," and directed all Respondents to respond to the subpoenas by February 5, 2021. ECF No. 76 at 9.

While no Respondent fully satisfied its obligations by the court-imposed February 5, 2021 deadline (or, with respect to nearly all Respondents, by today), counsel for Vale has had generally productive communications with counsel for most of the Respondents and thus has not involved the Court as we have sought to resolve all remaining objections. It is our intent to provide the Court with a status update in the near future. Perfectus's substitution of counsel—and particularly their selection of APM—is of great concern, however, and thus we respectfully request a status conference with the Court.

As with the other Respondents, prior to their termination by Perfectus, we had productive exchanges with Proskauer, who made five limited productions of documents between August 27, 2020 and March 19, 2021. In cover letters accompanying these productions, Proskauer acknowledged the incomplete nature of its production and committed that Perfectus would continue to make additional productions on a rolling basis.<sup>1</sup> On March 18, 2021, Proskauer suddenly informed Vale that Perfectus, a New York real estate company, had hired Doron Levy of APM, an Israeli lawyer not licensed to practice in New York, to manage its further production.<sup>2</sup> When we sought to confirm that Proskauer would oversee and certify the work of non-admitted foreign counsel, Proskauer advised us that Mr. Levy's APM colleague Joseph Z. Hellerstein was admitted in New York and that Mr. Hellerstein—who is likewise based in Israel along with the APM firm itself—would replace Proskauer as counsel for Perfectus.<sup>3</sup>

Respectfully, charging Mr. Levy's firm with overseeing the production of Perfectus's documents—on the subject of whether Steinmetz and his entities have sought to bury the fruits of their fraud through Perfectus's investments—is the proverbial fox guarding the henhouse. Not only has Mr. Levy served as counsel for Balda, Nysco and BSGR (the entity against whom Vale has obtained a judgment in excess of \$2 billion in the Southern District of New York for perpetrating the fraud), but records indicate that his firm, APM, *is a recipient of some of the proceeds traced to the fraud committed against Vale*.<sup>4</sup> Mr. Levy has been a "special advisor" to the council of Balda and a board member of Nysco, and he manages the English Proceedings on their behalf.<sup>5</sup> Furthermore, Mr. Levy and APM represent Nysco as Israeli counsel in administration proceedings for BSGR in Guernsey.<sup>6</sup> As flagged by Vale in its

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<sup>1</sup> For example, the productions are missing certain statements that should exist, as well as responsive documentation referenced in the productions themselves.

<sup>2</sup> Exhibit 1, March 18, 2021 E-mail from Robert J. Cleary.

<sup>3</sup> *Id.* March 22, 2021 E-mail from Samuel Levander; April 7, 2021 E-mail from Robert J. Cleary. Mr. Hellerstein subsequently filed a notice of appearance and an order for substitution was granted on April 26, 2021. ECF No. 83.

<sup>4</sup> Exhibit 2, June 9, 2020 Crowe Interim Progress Report at 13 (identifying transfers for legal services to Amit, Pollak, Matalon & Co for USD 27,266 on March 17, 2011).

<sup>5</sup> ECF No. 26-3.

<sup>6</sup> Exhibit 3, August 11, 2020 Order of the Royal Court of the Island of Guernsey; Exhibit 4, August 4, 2020 Letter from Doron Levy to Guernsey Court, Applications concerning BSG Resources Limited.

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subpoenas, Mr. Levy is a known Steinmetz associate, and has served on the board of directors of various Steinmetz entities, such as Roslindale Pte Ltd, a Singaporean-registered company of which BSGR owns preference shares, and a trust that Mr. Levy holds in favor of Steinmetz's children.<sup>7</sup> We understand that Mr. Levy has a role in the holding or ownership of Steinmetz's personal residence in Israel as the sole director and shareholder of the Arsuf Trust.<sup>8</sup> Finally, Mr. Levy was detained in 2017 alongside Steinmetz in connection with an international money laundering investigation related to land purchases in Romania, which culminated in Steinmetz's criminal conviction in Romania last year.<sup>9</sup>

As we feared, Perfectus's remarkable decision to replace Proskauer with Mr. Levy and APM appears designed to thwart and delay compliance with the January 29 Order. Promptly following the substitution, counsel for Vale reached out to Mr. Hellerstein to schedule a call to discuss the remaining productions, but nearly a full week has passed and Mr. Hellerstein has remained unresponsive and refused to meet and confer or even acknowledge if or when Perfectus would satisfy its long overdue, Court-ordered obligations.<sup>10</sup>

As a result of the foregoing, Vale respectfully requests a status conference at Your Honor's earliest convenience to address Perfectus's non-compliance with the January 29 Order and how Vale and the Court can be certain that any production by Perfectus will be complete given its engagement of Mr. Steinmetz's, Balda's and Nysco's close confidante to oversee its production of documents concerning, among other things, the very assets that Mr. Levy's other clients may have sought to conceal from creditors like Vale.

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<sup>7</sup> See Exhibit 5, JA0128588 (summary of meeting/call with Doron Levy dated May 30, 2019); Exhibit 6 JA0065049 (2017 Roslindale financial statements), Exhibit 7 JA0065005 (March 27, 2019 correspondence with Mr. Levy re Roslindale). These documents, produced by the former Joint Administrators for BSGR in Chapter 15 proceedings in the U.S. Bankruptcy Court for the Southern District of New York, *In re BSG Resources Limited (in administration)*, No. 19-11845 (SHL), are no longer designated confidential by virtue of their public use in administration proceedings in Guernsey.

<sup>8</sup> Exhibit 8, Extract from Israeli Land Register and Translation; Exhibit 9, Corporate Registry for Block 6680 Parcel 338 the Arsuf Trust Assets Holding Company Ltd.

<sup>9</sup> Exhibit 10, Nitzan Cohen, *Billionaire Beny Steinmetz and Acting Bezeq Chairman David Granot Are Among Five Being Quested by Israel Police's Lahav 433 Division*, Globes (Aug. 14, 2017), <https://en.globes.co.il/en/article-steinmetz-arrested-in-money-laundering-case-1001201191>; Exhibit 11, *Romania Sentences Israeli Magnate Steinmetz in \$145m Organized Crime Case*, Times of Israel (Dec. 18, 2020), <https://www.timesofisrael.com/romania-sentences-israeli-magnate-steinmetz-in-145m-organized-crime-case/>. More recently, Levy has been implicated in other criminal investigations, see Exhibit 12, *Ela Levi-Weinrib, Top Israeli Tax Lawyer Doron Levy Arrested in Dayan Bros Case*, Globes (Dec. 28, 2020), <https://en.globes.co.il/en/article-top-israel-tax-lawyer-doron-levy-arrested-in-dayan-bros-case-1001355026>.

<sup>10</sup> Exhibit 13, April 27-29, 2021 E-mail correspondence between Jeffrey A. Rosenthal, Samuel Levander and Joseph Hellerstein. This email chain is complete, as Vale has received no further response from Mr. Hellerstein.

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Respectfully submitted,

/s/ Jeffrey A. Rosenthal

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cc: Counsel of Record

Vale's letter motion to compel production from Respondents Perfectus Real Estate Corp. and Tarpley Belnord Corp. is due **May 26, 2021**. Respondents' Opposition is due **June 9, 2021**.

Any motion by Vale to disqualify Respondents' counsel is also due **May 26, 2021**, and Respondents' opposition is due **June 9, 2021**.

Failure to timely respond may result in the Court deeming Vale's motion(s) to be unopposed. Each submission is limited to 4 single-spaced pages, excluding exhibits, and shall cite applicable case law. There will be no replies. **There will be no extensions to this schedule absent extraordinary good cause.**

**SO ORDERED.**



Ona T. Wang                      5/12/21  
U.S.M.J.